IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1962 OF 2005

IN

SUIT NO.1822 OF 2004

Eros Multimedia Pvt. Ltd. ...Plaintiff.

vs.

1.Cinevistaas Ltd. & another. ...Defendants.

Mr.J.P.Sen i/b. R.M.Azim for Plaintiff.

Mr.B.B.Saraf i/b. Ranjit & Co., for Defendants.

CORAM: D.K.DESHMUKH,J.

DATED: 15th February, 2007.

P.C.:-

1. This is a notice of motion taken out by the plaintiff. The plaintiff has filed this suit claiming money decree against the defendants and also claiming declaration that until this amount which is claimed by the plaintiff from the defendants is refunded or repaid, there is a charge on the prints and

proceeds of the movie for the protection of the amount which was advanced by the plaintiff to the defendants. According to the plaintiff, the plaintiff has advanced an amount of Rs.1,00,00,000/- (Rupees One crore only) to the defendants who were to produce a move called “Garv-Pride & Honour”. According to the plaintiff, as per the agreement entered into between the parties there was a time limit fixed within which the film was to be delivered by the defendants to the plaintiff. According to the plaintiff, the defendants did not abide by the time limit and therefore, as per the agreement, the agreement was terminated by the plaintiff. According to the plaintiff, the agreement between the parties provides that on lawful termination of the agreement by the plaintiff, the plaintiff would be liable to refund the amount with interest, and till the amount is paid by the defendants to the plaintiff, the defendants will not be entitled to sell any rights in the movie to anybody else and that there will be a charge in favour of the plaintiff on the print and the proceeds of the film. The plaintiff had taken out a notice of motion earlier which was notice of motion no.1859 of 2004 for an order restraining the defendants from creating third party rights in the prints of the movie till the amount to which the plaintiff is entitled is paid to the plaintiff. It appears that initially an ad-interim order was made in that notice of motion directing the defendant no.1 to furnish a bank guarantee in the amount of Rs.50,00,000/-. But it is common ground that subsequently that motion was withdrawn and the bank guarantee stood discharged.

2. The present notice of motion has been taken out by the plaintiff for direction to defendant no.1 to deposit the amount of Rs.1,09,11,919/- being the amount to which, according to the plaintiff, the plaintiff is entitled. The plaintiff is claiming this interim relief against the defendant no.1 because, according to the plaintiff, by the agreement between the parties rights in favour of the plaintiff in relation to the print of the movie have been created and because those rights have been disturbed by the defendants, the plaintiff is entitled to have an order directing the defendants to deposit the sale proceeds. Perusal of the affidavit filed in support of the notice of motion, however, does not disclose as to for what amount the rights in the movie were sold by the defendants in favour of some party. Perusal of the agreement between the parties shows that by that agreement certain rights in relation to the movie were definitely created in favour of the plaintiff and those rights were to remain in force even after termination of the agreement by the plaintiff till the amount paid by the plaintiff is repaid by the defendants. But once the plaintiff fails to enforce those rights and allows defendants to create third party rights, in my opinion, the security of the plaintiff will disappear and therefore, in order to seek an order directing the defendants to deposit the amount, the plaintiff will have to make out a case for securing the decree that may be passed in favour of the plaintiff. The plaintiff will have to satisfy the Court that unless the Court makes the order directing the defendants to furnish security, the decree that may ultimately be passed in favour of the plaintiff may be defeated. Such a case admittedly has neither been pleaded nor been argued. In these

circumstances therefore, in my opinion, the plaintiff is not entitled to interim order which is sought by the plaintiff in this notice of motion . The notice of motion is therefore, disposed of.